Department of Revenue

OFFICE Board of Rev

STATION Madras

Mis. No. 1828

Dated 8/

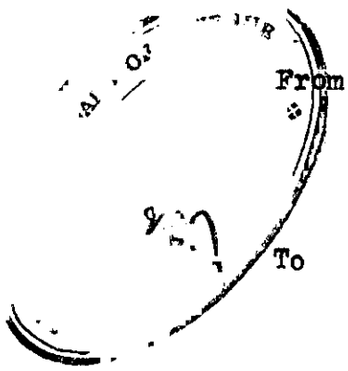
Pages in the file

SUBJECT.)

Swb Law regulation - (S. Kanara)
Paraphernalia in Hegnad Dge. - Manga
Swb Const - orte 5/28 Above

Ref.B3-520-40. South Kanara Collector's Office,

Mangalore, dated 28 - 6 - 1940.



From

M. V. Subrahmanyan Esquire, M.A., I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Irrigation,

M a d r a s.

Sir,

Suits - Land Acquisition - Mangalore Taluk - Hejmadi village - S.No. 73/3B - Fish Curing Yard, Mulki - Subordinate Court, Mangalore - L.A.C. 5/38 - Adverse decision- Appeal to High Court.

****

In L.A.C.No. 1/37 on the file of the Revenue Divisional Officer, Mangalore, S.No.73/3B of Hejmadi village, Mangalore Taluk, belonging to Sri Ramachandra Dev of the Palmar Mutt was acquired. On 21-3-38 the Land Acquisition Officer (Revenue Divisional Officer, Mangalore) passed an award allowing a compensation of Rs. 168-7-7 for 1.60 acres of land acquired. Of this, Rs. 130/- represents the cost of the land at Rs. 81-4-0 per acre. Owing to the objection of the owner of the land who claimed increased compensation the matter, however, went up to the Subordinate Court, South Kanara on a reference under section 19 (1) of the Land Acquisition Act.

2. The objection of the claimant was not only as regards the value of the land, but also as regards the value of the tree-growth and damages on account of the acquisition as having injuriously affected the rest of the owner's property. The Subordinate Court has now allowed the owner's claim in respect of the value of the land to a certain extent, but disallowed all other claims. The net result is that the Government have now to pay an additional compensation of Rs.170/ together with the 15% solatium, which comes to Rs. 25-8-0, as also the interest thereon at 6% per annum from 6-4-1938.

3. I enclose a copy of the Mangalore Government Pleader's letter Ref.No. A.225-40 dated 26-2-40 in which he has dealt with the case in detail. This seems to be a clear case in which the Government have to appeal to the High Court, for, the Subordinate Judge seems to have attached more importance to the oral evidence of P.W.2 who is no other than the tenant of the claimant. The Subordinate Judge ought not to have attached any importance to this Man's oral evidence especially when in his own statement. Exhibit D which was proved in Court, - this witness had stated that the rent was Re.1-0-8 for about 50 cents. A perusal of the judgment would clearly show that the claimant had no proof whatever to substantiate his claim for an increased rate for land value. The fact that in the event of an appeal being filed, there is the possibility of cross objections being taken as stated by the Government Pleader need not deter us from filing an appeal. The Government Pleader distinctly says that there are valid grounds for preferring an appeal. I, therefore, recommend that an appeal may be ordered to be filed in the High Court by the Government Pleader, Madras.

4. I enclose a copy of the Mangalore Government Pleader's Ref. No.A. 463-40 dated 26-6-40 which gives the chief grounds of appeal. A precis of the case will be found in paras 2 to 5 of the Government Pleader's letter dated 26-2-40 (copy enclosed). I enclose a file containing the Land Acquisition Officer's reference to the Subordinate Judge copies of the award and other documents. I also enclose two certified copies of the Subordinate Judge's order in L.A.C.5/38 and one certified and one typed copy of the decree therein. My office file R.Dis. 3981/37 dated 17-4-39 is also enclosed for reference and return.

5. In this case, the judgment and decree was passed on 21-12-39 on which day the application for copies was put in. Copies were, however, ready for delivery to the Government Pleader on 21-2-40 and the same were received by the Collector

on 29-2-1940. In the concluding para of his letter quoted above. the Government Pleader had stated that the appeal time in this case would expire about the middle of May. But the High Court vacation commenced on the 6th May and under section 4 of the Indian Limitation Act, the appeal can be filed on the re-opening day, which in this case is, I understand, the 16th July. The appeal time will, therefore, expire on 15-7-40 and the appeal has to be filed on 16-7-40. I request that the Government Pleader, Madras, may be consulted urgently and an appeal ordered to be filed in the High Court on the re-opening day.

6. The delay in reporting this matter is due to the clerk having bottled up the paper. He is being duly dealt with.

29.6.40

For Collector.

29-6-40

Copy of letter Ref.No. A-225-40, dated 26-2-1940 from the Government Pleader and Public Prosecutor Mangalore to the ----- Collector of South Kanara

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Suits - Land Acquisition - Mangalore Taluk - Hejmady village S.No. 73/3B - Fish Curing yard, Mulki - L.A.C.No. 5/1938 - Sub-Court of South Kanara - Certified copies of the decree and judgment - For appeal

Your Ref.ಜಿ೦-೦೪೮1-37, dated 14-2-1940.

I am forwarding herewith certified copies of the judgment and decree in L.A.C. 5/1938.

2 The Revenue Divisional Officer awarded to the claimant ---- Rs. 168-7-7-of which Rs. 130/- was the compensation for the land at Rs. 81-4-0 per acre. The evidence before him was of a statement by the tenants in possession - Ex. D in which it was stated that the rent that was being paid by them to the landlord, the -- present claimant, was Rs.1-0-8 for about 50 cents. The Revenue - Divisional Officer acting upon this rental basis capitalized the -- same at 25 years purchase and awarded the amounts stated above.

3. The claimant objected to the valuation. He claimed Rs.750/- compensation for the land, Rs. 50/- for 5 palmyrah trees, Rs. 8/- for two ----- cart-loads of jungle growth and Rs. 300/- for damages on account of acquisition injuriously affecting the rest of his property He claimed in all thus Rs.1108-0-0. The Court after enquiry has --- rejected the claim except the item for the compensation for the land. The Court has awarded Rs. 300/- as compensation for the -- land and directed the Government to pay an additional compensation of Rs. 170/- with the usual 15% solatium.

4. This the Court had arrived on the same basis as the Revenue Divisional Officer - that is to say on the rental basis. The --- lower Court rejected practically all the evidence in the case on either side except the evidence of P.W. 2 and R.W. 2. P.W.2, who it may be remembered is the tenant of the claimant proved on ---- behalf of the Government his statement Ex. D to R.W. 1 that the -- rent was Rs.1-0-8 for about 50 cents. But as the Court found, -- his leanings towards his landlord made him to say that the rent --

Rs.1-0-8 that he paid was only for 25 or 30 cents, thus going back upon his signed statement Ex. d. He also obliged his -- landlord by saying that he had to perform "bitti" service ---- (free labour) as part of the rent. The Court, therefore, came to the conclusion that the rent was Rs. 4/- for 50 cents, ---- including also the value of "bitti" service. It capitalized the value at 25 years' purchase as Revenue Divisional Officer - did and arrived at Rs. 300/- an acre as reasonable compensation.

5. The basis for the judgment it would thus be seen, is -- very simple. The Court preferred the oral statements of P.W.2 in Court that the rental was Rs.1-0-8 for 25 or 30 cents in -- preference to his signed statement Ex. d in which he has stated that the rent was Rs.1-0-8 for 50 cents. No "bitti" service was mentioned to Revenue Divisional Officer at all as part of the rent. The Court itself was satisfied that P.W. 2 though examined on behalf of the Government appeared to have leanings towards the landlord, the claimant. The Court has also found that the bitti service is only nominal; and what is more, the claimant did not produce his account books or the lease deeds which would have proved his contention that the rent stated was for 25 or 30 cents and not 50 cents. The proceedings in the Court are to be considered as objections against the award of the Revenue Divisional Officer, and since the award relies on Ex. D both for rent and extent of the land, it was incumbent - on the claimant to produce his accounts and lease deeds.

6 I, therefore, think that there are valid grounds for preferring an appeal against the order of enhancement. But I -- may also say that the major portion of the claim has been ---- rejected by the Court and the amount enhanced is only Rs.170/-. If an appeal is preferred there is the possibility that cross objections might be taken I am mentioning this merely to -- bring to your notice all the aspects of the case in considering the advisability of an appeal. The time for filing the appeal to the High Court would expire about the middle of May.

Enclosures:- 1. Certified copy of the decree in L.A.C.5/1938.
2. 14 copies of the printed judgment in do.

(True Copy)

For Collector

29.6.38

Letter-from the Government Pleader and Public Prosecutor, Mangalore.
To-the Collector of South Kanara.
Dated-Mangalore, 26.6.1940.
No.-Ref.No.A-463-40.

*****

Suits - Land Acquisition - Mangalore Taluk - Hejmadi llage - S.No.75/3B - Fish curing yard, Mulki - Sub Court uth Kanara - L.A.C.5/38 - Filing of Appeal.

*****

Your Ref: Bo-320-39.

Your D.O., dated 26th June 1940.

x x x x x

I have stated below the chief grounds of appeal.

1. The order of the lower court in so far as the nhancement of compensation is concerned is contrary to w/and evidence.

2. The lower court while proceeding rightly on the ntal basis erred in attaching weight to the oral ---- stimony of P.W.2 in cross examination in preference to s signed statement Ex.D. given to R.W.1 that the rent is Rs 1 0.8 for 50 cents.

The lower court should have distrusted his ----- interested statement that the rent Rs.1.0.8 was only for 25 or 30 cents, and not for 50 cents as stated in Ex.D.

4. The lower court should have thought that the introduction of 'bitti' service was a clever after thought.

5. The lower court is not justified in its conclusion that Rs.4/- was the rent for 50 cents.

6. The lower court has erred in awarding Rs.300/- as compensation.

7. The lower court should have drawn adverse inference from the claimant not producing the accounts for lease deeds which should have proved his case.

All connected records I have sent herewith. The precis of the case is furnished in paras 2 to 5 of my letter of 26.2.40.

/True Copy/

For Collector.

29.6.40

M.D'S.29/6.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..	8/7	MG 4.35
When copied ..	9/7	GM
When examined..	9.7	Asst Sec.
When signed ..		
When despatched.		

SUBJECT :— Sub. Land Acquisition - (S. Kanara) - Mangalore Tq - Hejmadi Vge. - Mangalore Sub Court - L.Rc. No. 5/38 - Adverse decision - Filing of appeal - Sanctioned.

READ AGAIN _____, dated _____ 19____

" " _____ " _____ 19____

READ *ALSO* :—

No. _____ From the Collr. of S. Kanara No. B3-520/40, dated 28.6.1940 - Q.

" _____ " _____ " _____ " _____ 19____

" _____ " _____ " _____ " _____ 19____

~~Order~~ Resolution ~~Mst.~~ Ms. No. 1828, dated 8-7 1940

V.E
Issue warrants
7/7

A copy of the Colrs letter read above with enclosures and connected record is forwarded to the G.P. Madras who is requested to file an appeal in the High Court against the Mangalore Sub Court decision in L.Rc. No. 5 of 38. The time for appeal expires on 15-7-40.

2. The ~~L.A.~~ Land Acquisition Officer fixed the gross annual rental at Rs. 4/- per acre, deducted the assessment of Re. 0-12-0 per acre and capitalised the ~~rate~~ net rental. In exchange

the assessment. The Sub Court has not made any deduction on account of assessment. The G.P. is requested to add the omission as one of the grounds of appeal.

3. Any further information and records may be obtained direct from the Court of Skaraam.

hrm 6.7 6/7/40 hrm 6/7/40

To The G. P. Madras

-x- { with copies of the court letter and enclosures and records as per list

To the Court of Skaraam.

-x- pp. 1-7 cf. to be copied first and

{ 1 file containing L.A.O's rep. etc.
2 certified copies of judgment
1 certified and 1 typed copy of decree, and
Collr's R.Dis. 3981-37 of 17.4.39.
(to be sent in original)

kept in a bundle per T.L.

C.F. 32.

Judicial DEPARTMENT.

In reply, please quote number, date and short title.*

Received *Registered* 9374/11

From (Name) Sri B. Sitarama Raom,

(Designation) Government Pleader,

Post Box ....., (Station) Madras.

Telegraphic Address .....

To

The Secretary to the Board of Revenue,
Land Revenue & Irrigation.

No. 5745, *dated* 17th July *19* 40.

Sir,

ENCLOSURES.....

.....

.....

SPARE COPIES 9-10 (V)

Suits - Land Acquisition (South Kanara) - Mangalore Sub Court - L.A.C.5/38 - Adverse decision - Appeal filed.

B.P.Mis.No. 1828, dated 8-7-40.

With reference to the proceedings referred to above, I have the honour to state that I have preferred an appeal to the High Court on 12-7-40 against the enhanced award in L.A.C.No.5/38, Sub Court, Mangalore.

As per the amended rules, 12 printed copies of the judgment of the lower court will have to be filed in the High Court along with the appeal memo ~~and xxxpyxixxxxquixxdxfox myxxxfoxxxxx~~ - Vide, page 410 of Part II of Fort St. George Gazette, dated 18-4-1939. One copy is required for my reference in pointing out portions of documents that require translation and printing for the hearing of the appeal.

3/ As only 2 printed copies of judgment were received with the B.P. under reference, I have the honour to request that the Board will be pleased send me 11 more printed copies of the judgment to enable me to file them in court.

I have the honour to be,
Sir,
Your most obedient servant
B. Sitarama Raom
Government Pleader.

13 CAH

DRAFT FOR APPROVAL.

NS (salt)

	Date.	Initials.
When received for fair copying ..	21/7	
When copied ..		
When examined ..	22-7	
When signed ..	22/7	
When despatched.		

SUBJECT :— Suits - Land Acquisition - (S. Kanara) - Mangalore Sub-court - L.A.C. 5/38 - Adverse decision - Appeal filed.

READ AGAIN dep 22/7, dated ..... 19....

" " ..... " ..... 19....

READ *ALSO* :—

No. ..... From the Govt. Pleader Madras. 545, dated 17-7-1940.

" ..... " ..... " ..... " ..... 19....

" ..... " ..... " ..... " ..... 19....

Order / Resolution Ms. / Rout. No. ....., dated L.Dis. T.3745-40 & 22/7/1940.

Issue intimation 22/7

Communicated to the Collr of S. Kanara.

2. The Collr is requested to take necessary action with ref. to paras 2 and 3 of the G.P's letter

hm 22/7 hm 23/7/4

2/22/7

On

This will be stitched with B.P.Mis 1828/8.7.40 after issue

hm 2/8/7

22/7

15 9 3865

Revenue Department.

Suits (South Kanara) - Mangalore Sub Court - L.A.C.5/38 - Land acquisition - Adverse decision - Appeal to High Court - Filed.

From the Government Pleader, No.544, dated the 17th July 1940.

Endorsement No.2548-G/40-1, dated the 23rd July 1940.

Communicated to the Board of Revenue.

A.J.Platt,

Under Secretary to Government.

To the Board of Revenue, with copy of Government Pleader's letter).

Forwarded.

(By Order)

P.Krishnan 24/7/40

Superintendent.

m.p.

****

Copy of letter from the Government Pleader, Madras, to the Secretary to the Government of Madras, Revenue Department, No.544, dated the 17th July 1940:--

Subject:-

Suits - Land Acquisition (South Kanara) - Mangalore Sub Court - L.A.C.5/38 - Adverse decision - Appeal filed.

******

With reference to G.O. Mis. No. 1315, Revenue, dated 29th August 1923, I have the honour to report as follows:-

Some lands were acquired by Government in Hejmadi village, Mangalore Taluk and the Revenue Divisional Officer, Mangalore, awarded a compensation of Rs.168-7-7 for the lands acquired. The claimant, Palmar Mutt, not being satisfied with the award, applied for a reference to Civil Court and accordingly the matter was referred to the Sub Court, South Kanara, under Section 19 (1) of the Land Acquisition Act. The Sub Court

Court awarded an additional compensation of Rs.195-0-0 over and above the amount awarded by the Revenue Divisional Officer. Against this enhanced award, under instructions from the Board of Revenue, I have preferred an appeal to the High Court on 12-7-1940.

A.S. (Retd)

To A.S.(Retd).

Intimation has already been received directly from the G.P. re-filing of appeal and has been communicated to the Collr-file is in mine. This may be recorded & returned with connected D.P. when it is recd. from mine.

26/7/40

26/7/40

A.S (Sett)

Papers put up.
1) Judgment (X)
2) Collrs R.Dis. 3981-37 (H)
3) File containing ref. to court etc. (A)

Suits - Appeal time expires 15-7-40

~~Suits~~ Note File

Suits - Land Acquisition (S. Kanara) - Mangalore UK - Hejmadi vge - Mangalore sub-Court - L.A.C. No. 5/38 - Adverse decision - Appeal to the High Court.

I. 3393-40 From the Collr of S. Kanara -
No. B3-520-40 dt 28-6-40.

To A.S. (Sett.)

The main facts of the case are contained in para 1, p.1 cf. The additional compensation payable under the court decree is about Rs. 200/-.

2. The basis of the L.A.O's award is given in para 4, pp. 65-66 cf. (H); the reasons for the enhancement are given in paras 8 and 9, pp. 2-3 (X). The L.A.O. fixed the annual rental value at Rs. 4/- per acre taking into account the ascertained rate (Rs. 2 to 3) at which the lands had actually been leased out and making allowance for the long-term nature of the lease. The Court fixed the rental value at Rs. 8/- per acre (Rs. 4 for 50 cents) on no very clear basis. The only documentary evidence available to both was the statement given before the Rev. Inspector by P.W. 2 to the effect that the actual rent paid was Re. 1-0-8 for 50 cents. Compared to this, the L.A.O.'s rate was certainly liberal.

pp. 66 (H)
and
Col 12, p. 54 (H)

The only ~~reasonforthave~~ basis for the enhancement made by the Court is the consideration mentioned at A p. 3(x). The Court would appear to have adopted the rate of Rs. 1-1-0 or, 1-2-0 for ~~cents~~ 25 cents stated by the claimant's agent as the actual rate obtaining, and to have added to it an imaginary value of some free labour rendered by the ~~less~~ lessee. Neither the lease rate nor the condition re. free labour had any documentary support: no rental accounts were produced and no lease deeds were put in. The Court's rate seems arbitrary and an appeal may be filed as suggested by the G.P. and the Coll.

para 8, pp. 2-3 (

para 9, p. 3 (x)

hds Nil

3. The main grounds of appeal are given at p. 7 cf by the ~~last~~ local G.P.

para 6, p. 6 cf. as para 3, p. 2 cf

It will be seen from A p. 66 cf. (H) ~~as~~ that the d.A.o. fixed the gross annual rental at Rs. 4/- per acre, deducted the assessment of Re. 0.12-0 per acre, and capitalised the net rental of Rs. 3-4-0. In para 9, p. 3 (x), the Sub-Court has made no deduction on account of assessment. This may be added as one of the grounds of appeal.

hds Nil

4. The papers may be forwarded to the G.P. Madras with instructions to file an appeal and to amend ~~to~~ the grounds of appeal as in para 3 ab

hds Nil

hds 4.7

for orders

Nil.

J. S

8/5.7.40.

AS (Sett)

To AS (Sett)

Refr Orders at p. 2 nx

Draft submi

6.7.17

Mis 1828/8.7.60

~~Full Board~~.

	I.A.	A.D.S. & L.R.	Asst. Secretary. L.R.	Sett.	Sep Rev.	C.W.	Jt. Secy.	Secy.	M-4	M-3	M-2	M-1	
1 Open file seen by				✓			✓					✓	
2. Final draft seen by.				✓									
3. Now circulated to													
4. Initials.				9/1977									

Passed for record.

~~Secretary~~.
Joint Secretary.

A.S. (C.W.)

~~A.S. (L.R.)~~

A.S. (Sett) hws 1977/10

~~A.S. (Excise)~~

A.D.S. & L.R.

~~I.A.~~

Note:- Entries not required to be scored out.